IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Bail Appl..No. 6865 of 2007()

CC.312/2006 of J.M.F.C., PATTAMBI

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PETITIONER/ACCUSED NO.4:

BASHEER, S/O. KUNHALIPPA,
ACHIPARA HOUSE, PARAPPURAM, BHEEMANADU,
MANNARKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT:

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE, CHALISSERY POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY P.P. SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/11/2007 ALONG WITH B.A.NO.6869/07 AND OTHER CONNECTED CASES THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos. 6865, 6869, 6874, 6877, 6880, 6881 & 6890 OF 2007

Dated this the 6th day of November, 2007

ORDER

The common petitioner in these petitions faces indictment in several prosecutions pending before various courts. In all those cases, final reports have already been filed. Cognizance has been taken. The cases have been pending. Some of them have been transferred to the list of Long Pending Cases. The cases include the cases triable exclusively by the Court of Session. In such cases committal proceedings are registered before the learned Magistrates.

2. Consequent to the non-appearance of the petitioner, the petitioner finds coercive processes issued by the learned Magistrates chasing him. According to the petitioner, he is absolutely innocent. His absence earlier was not wilful or deliberate. He had no knowledge of the proceedings. He is

willing to surrender before the learned Magistrates concerned and seek regular bail. But the petitioner apprehends that his applications for regular bail may not be considered by the learned Magistrates on merits, in accordance with law and expeditiously. It is, in these circumstances, the learned counsel for the petitioner prays that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of these cases, that any such reasons exist.

4. It is for the petitioner to appear before the learned Magistrates and explain to the learned Magistrates the circumstances under which he could not earlier appear before the learned Magistrates. I have no reason to assume that the learned Magistrates would not consider the petitioner's applications for regular bail on merits, in accordance with law

and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, these bail applications are dismissed; but with the observation that if the petitioner surrenders before the learned Magistrates concerned and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrates must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge